FILED

NOT FOR PUBLICATION

AUG 01 2008

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

NGUYEN TUYEN HONG; LE YEN THI, et al.,	No. 05-77170
Petitioners,	Agency Nos. A77-427-195 A77-427-196 A77-427-197
v.	
MICHAEL B. MUKASEY, Attorney General,	MEMORANDUM[*]
Respondent.	

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 22, 2008[**]

Before: B. FLETCHER, THOMAS, and WARDLAW, Circuit Judges.

Nguyen Tuyen Hong and his wife and son, all citizens of Vietnam, petition

for review of a Board of Immigration Appeals' order dismissing their appeal from

an immigration judge's ("IJ") decision denying their application for asylum,

[**]   The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

withholding of removal, and relief under the Convention against Torture ("CAT").

We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence, *Ochoa v. Gonzales*, 406 F.3d 1166, 1169 (9th Cir. 2005), and we deny the petition.

Even if their asylum application had been timely filed, substantial evidence supports the IJ's conclusion that petitioners failed to establish eligibility for asylum and withholding of removal, because they did not provide evidence indicating that they were or would be targeted on account of a protected ground. *See id*. at 1170-72.

Because we reach the merits of petitioners' asylum claim, we decline to consider petitioners' contention that their due process rights were violated by ineffective assistance of counsel with regard to the untimely filing of their asylum application.

Substantial evidence supports the IJ's denial of CAT relief because Tuyen Hong did not show that it was more likely than not that he would be tortured if returned to Vietnam. *See Malhi v. INS*, 336 F.3d 989, 993 (9th Cir. 2003).

PETITION FOR REVIEW DENIED.